A.F.R.

Cr.R. 307/07

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Criminal Revision (P.R.) No.580 of 2007

Atul Singh

versus

State of Chhattisgarh

ORDER

Post for 26-06-2007

Sd/-
Dilip Raosaheb Deshmukh
Judge

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Criminal Revision (P.R.) No.580 of 2007

Applicant	Atul Singh, S/o Late Satyanarayan Singh, Aged about 30 years, R/o Babu Para, Ambikapur, Distt. Surguja (C.G.)
	versus
Non-Applicant	State of Chhattisgarh – Through P.S. Ambikapur, District – Surguja (C.G.)

Criminal Revision u/s 397 read with Section 401 of the Code of Criminal Procedure

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Present : Applicant by Shri P.Diwakar, Senior Advocate with Shri Adil Minhaj, counsel.
Non-applicant/State by Shri Akhil Agrawal, Panel Lawyer.
Objector by Shri Pankaj Shrivastava, counsel.

ORDER

(Passed on 26 -06-2007)

Being aggrieved by the order dated 18-01-2007 passed by Shri N.D.Tigala, IInd Additional Sessions Judge, Ambikapur (Surguja) in Sessions Trial No.409/2005 (*State of Chhattisgarh* vs. *Amit and others*) framing charges against the applicant for offences under Section 302 read with Section 120-B of the Indian Penal Code, the applicant has preferred this criminal revision under Section 397 read with Section 401 of the Code of Criminal Procedure.

(2) Brief facts are that on 25-06-2005 at about 3.20 P.M., one Jagmohan Singh, who was a star witness for the prosecution in the Lalbabu murder case, was shot in the Ambikapur Court premises by one Guddu Singh alias Vinod Singh. The prosecution case is that the

applicant Atul Singh, the main accused in the Laibabu murder trial hatched a criminal conspiracy with co-accused Shubhkaran Dwivedi who was also detained with him in District Jail, Ambikapur to eliminate the main witness Jagmohan Singh, in pursuance of which, Shubhkaran Dwivedi arranged for a professional shooter Vinod Singh alias Guddu Singh. A room was booked in Maya Lodge, Ambikapur for Guddu Singh alias Vinod Singh, the expenses of which were to be borne by the applicant Atul Singh. Atul Singh wrote a letter to the Manager of Maya Lodge stating that he would be making the payment for the stay of Guddu Singh in the lodge.

(3) In statements under Section 161 of the Code of Criminal Procedure, the witnesses divulged as under :- (i) Balsairam, the Manager of Maya Lodge divulged that the applicant had communicated through his Manager that he would be responsible for making payment for the stay of Guddu Singh on 29-04-2005 in Maya Lodge, Ambikapur. (ii) Rahul Sharma divulged that Vinod Singh had told him that Atul Singh, who was detained in jail, was bearing all his expenses. (iii) Sanjeet Tripathi divulged that at the behest of Shubhkaran Dwivedi and Guddu Singh, he had purchased a motor cycle which was driven by Guddu Singh, who used to meet Shubhkaran Dwivedi and Atul Singh at the jail. (iv) The letter written by Atul Singh to the Manager of Maya Lodge was also seized from Balsairam on 25-06-2005. (v) Mintu Singh divulged that Shubhkaran Dwivedi and Atul Singh, while being detained in Ambikapur Jail, were frequently seen talking to each other. (vi) Krishna Mohan Singh divulged that at the behest of Atul Singh dozens of people were visiting the Court premises from Uttar Pradesh and Bihar and his brother Jagmohan Singh had told him that Atul Singh was intimidating the witnesses through the accused persons, who had been

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granted bail. (vii) The prosecution also filed a document purporting to be an application made by Jagmohan Singh to the Superintendent of Police, Ambikapur (Surguja) on 24-06-2005 about apprehension of his elimination by Shubhkaran Dwivedi and Atul Singh through their associates from Jharkhand and Uttar Pradesh.

(4) On the basis of above material, Shri N.D.Tigala, the then learned IInd Additional Sessions Judge, Ambikapur found a *prima facie* case under Section 302 read with Section 120-B of the Indian Penal Code against Atul Singh and framed charges under the abovementioned sections.

(5) It is not disputed that the trial has commenced and as many as 12-13 witnesses for the prosecution have also been examined. It is also not disputed by Shri Akhil Agrawal, learned Panel Lawyer that the application dated 24-06-2005 by Jagmohan Singh, which was filed along with the charge-sheet, did not form part of the case diary. In other words, he specifically admitted that the case diary did not reveal that such an application was made by Jagmohan Singh to the Superintendent of Police, Ambikapur (Surguja) on 24-06-2005. Shri P.Diwakar, learned Senior Counsel appearing on behalf of the applicant did not dispute that in view of the decision of the Apex Court in ***Lalu Prasad @ Lalu Prasad Yadav* vs. *State of Bihar Through CBI (AHD) Patna*, 2006(4) Crimes 419 (SC)** it was not imperative for the learned Additional Sessions Judge to record the reasons before framing of charge and the Court was only required to form an opinion about the existence of a *prima facie* case against the accused under Section 120-B read with Section 302 of the Indian Penal Code.

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(6) Shri P.Diwakar, learned Senior Counsel for the applicant submitted that even if the entire material submitted by the prosecution under Section 173 of the Code of Criminal Procedure is admitted at its face value, no *prima facie* case under Section 302 read with Section 120-B of the Indian Penal Code is made out against the applicant, because there was not even an iota of material on record to show that the applicant had entered into a criminal conspiracy to eliminate the star witness Jagmohan Singh by hiring a professional shooter Vinod Singh alias Guddu Singh. It was urged that in order to *prima facie* substantiate a charge under Section 120-B read with Section 302 of the Indian Penal Code, it was imperative for the prosecution to produce material to show that the circumstances putforth by the prosecution taken together on their face value indicated the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which was not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relied could not be adequate for connecting the applicant Atul Singh with the commission of the crime of criminal conspiracy. Reliance was placed on ***State of Kerala*** **vs.** ***P.Sugathan and another*****, (2000) 8 SCC 203** and ***K.R. Purushothaman*** **vs.** ***State of Kerala*****, 2005 AIR SCW 5437**.

(7) On the other hand, Shri Akhil Agrawal, learned Panel Lawyer also placed reliance on ***State of Kerala*** **vs.** ***P.Sugathan and another*****, (2000) 8 SCC 203** and ***K.R.Purushothaman*** **vs.** ***State of Kerala*****, 2005 AIR SCW 5437** while contending that the fact of criminal conspiracy could be established on the basis of circumstantial evidence and since the circumstances putforth by the prosecution *prima facie* gave rise to an inference of an agreement between Shubhkaran Dwivedi and Atul Singh to eliminate Jagmohan Singh, who was the star witness in the

Lalbabu murder case, by bringing Vinod Singh alias Guddu Singh, a professional shooter for the job, the framing of charge under Section 302 read with Section 120-B of the Indian Penal Code against the applicant Atul Singh did not call for any interference in exercise of the revisional jurisdiction.

(8) Having heard the rival submissions, I have perused copies of the documents under Section 173 of the Code of Criminal Procedure filed by the prosecution.

(9) Criminal conspiracy is defined under Section 120-A of the Indian Penal Code as under :-

> Sec. 120-A : "Definition of criminal conspiracy. – When two or more persons agree to do, or cause to be done, –
>
> (1) an illegal act, or
> (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:
>
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.
>
> *Explanation.* – It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

(10) In ***Bhagwan Swarup Lal Bishan Lal*** **vs.** ***The State of Maharashtra,*** **AIR 1965 SC 682,** it was held that the essence of conspiracy is that there should be an agreement between persons who

do one or other of the acts described under section. The said agreement may be proved by direct evidence or may be inferred from acts or conduct of the parties. There is no difference between the mode of proof of the offence of conspiracy and that of any other offence and it can be established by direct evidence or by circumstantial evidence. In ***Baburao Bajirao Patil*** **vs.** ***State of Maharashtra,*** **(1971) 3 SCC 432,** the Apex Court observed that in an offence of criminal conspiracy there is seldom, if ever, that direct evidence of conspiracy is forthcoming. Conspiracy from its very nature is conceived and hatched in complete secrecy, for otherwise the whole purpose would be frustrated. In ***Nazir Khan and others*** **vs.** ***State of Delhi,*** **AIR 2003 SC 4427,** it was observed that privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available, offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference. In ***Suman Sood @ Kamal Jeet Kaur*** **vs.** ***State of Rajasthan,*** **S.L.P. (Criminal) No.2965 of 2006** decided on 14-05-2007, it was held by the Apex Court that an inference as to conspiracy can be drawn from the surrounding circumstances inasmuch as normally, no direct evidence of conspiracy is available. In ***E.K.Chandrasenan*** **vs.** ***State of Kerala,*** **AIR 1995 SC 1066**, the Apex Court held that a criminal conspiracy by its very nature is not hatched in open, it is secretly planned and can be proved even by circumstantial evidence

and the lack of direct evidence relating to conspiracy has no consequence. In ***Mohamad Usman Mohammad Hussain Maniyar and another*** **vs.** ***The State of Maharashtra*****, AIR 1981 SC 1062,** it was held that for an offence under Section 120-B of the Indian Penal Code, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implication. Direct independent evidence of criminal conspiracy is generally not available and its existence is a matter of inference. The inferences are normally deduced from acts of parties in pursuance of a purpose in common between the conspirators. In ***State of Kerala*** **vs.** ***P.Sugathan and another*** (supra), it was held by the Apex Court that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. In ***K.R.Purushothaman*** **vs.** ***State of Kerala*** (supra) also, it was held by the Apex Court that although the agreement among the conspirators can be inferred by necessary implication, the inference can only be drawn on the parameters in the manner of proved facts, in the nature of circumstantial evidence.

(11) In view of the law laid down by the Apex Court and stated above, upon scrutinizing the material putforth by the prosecution under Section 173 of the Code of Criminal Procedure, it reveals the following circumstances :-

(A) that Atul Singh, who was the main accused in the Lalbabu murder trial, and Shubhkaran Dwivedi were detained in District Jail, Ambikapur (Surguja).

(B) that Jagmohan Singh, the deceased was a star witness in the said Lalbabu murder case.

(C) that Atul Singh was to bear the entire expenses of the stay of Guddu Singh alias Vinod Singh in Maya Lodge, Ambikapur.

(D) that Vinod Singh alias Guddu Singh was regularly visiting Atul Singh and Shubhkaran Dwivedi at the jail.

(E) that in presence of Atul Singh, Shubhkaran Dwivedi had asked the witness to arrange for a room in Maya Lodge for Vinod Singh alias Guddu Singh.

(F) that Atul Singh had written a letter to the Manager of Maya Lodge that he would bear the expenses of the stay of Guddu Singh.

(G) that Shubhkaran Dwivedi and Atul Singh were seen frequently talking to each other over some matter by the inmates in the jail.

(H) that Atul Singh had hired many persons from U.P. and Bihar for intimidating the witness.

(I) at the behest of Atul Singh and Shubhkaran Dwivedi a motor cycle was arranged for Guddu Singh.

(12) After considering the circumstances mentioned above, I am of the considered opinion that even if the application dated 24-06-2005 of Jagmohan Singh is removed from the zone of consideration, there is sufficient material on record to *prima facie* draw an inference of a criminal conspiracy between Shubhkaran Dwivedi and Atul Singh for eliminating the principal witness Jagmohan Singh in the Lalbabu

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murder case by hiring a professional shooter Vinod Singh alias Guddu Singh. Thus, the contention that there is no material on record to *prima facie* substantiate the charge under Section 302 read with Section 120-B of the Indian Penal Code against Atul Singh is liable to be rejected. Applying the principles which can be culled out from the principles set out above to the circumstances mentioned above, the inevitable conclusion is that the trial Court was justified in framing a charge against the applicant under Section 302 read with Section 120-B of the Indian Penal Code. The impugned order passed by the learned Additional Sessions Judge thus does not suffer from any infirmity.

(13) This criminal revision, being without merit, is accordingly dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge

24 -06-2007

Gopal